OIPE JC130 FEB 04 2004 PATENT & TRADEMARK OFFICE

AF/2177 2700

PTO/SB/21 (03-03)
Approved for use through 04/30/2003. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/306,135
Filing Date	May 6, 1999
First Named Inventor	Janice Lynn Farmer et al.
Art Unit	2177
Examiner Name	Khanh B. Pham
Total Number of Pages in This Submission: 46	Attorney Docket Number: 013129-00059 (TH1213)

ENCLOSURES (*Check all that apply*)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☐ Amendment/Reply
- ☐ After Final
- ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
- ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) _____
- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☑ Appeal Communication to Group **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☑ Other Enclosure(s) (please Identify below):

Remarks

1. Appeal Brief - 3 copies; and
2. Return receipt postcard.

RECEIVED
FEB 0 9 2004
Technology Center 2100

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual	Locke Liddell & Sapp LLP, by Steven S. Boyd, Reg. No. 42,353
Signature	
Date	January 30 2004

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 01/30/2004

Typed or printed	Beth A. Sanders		
Signature		Date	01/30/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, Washington, DC 20231.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

OIPE JC100
FEB 04 2004
PATENT & TRADEMARK OFFICE

#22
2/11/04
A.W

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§	*Group Art Unit:* **2177**
	§	
JANICE LYNN FARMER, et. al	§	
	§	*Examiner:* **Khanh B. Pham**
	§	
Filed: **May 6, 1999**	§	
	§	
Serial No.: **09/306,135**	§	
	§	
For: **Hazard Communication System**	§	*Attorney Docket No.* **TH1213**

RECEIVED
FEB 09 2004
Technology Center 2100

APPEAL BRIEF

Steven S. Boyd
Registration No. 42,353
Locke Liddell & Sapp LLP
600 Travis Street, Suite 3400
Houston, Texas 77002-3095
(713) 226-1218

Yukiko Iwata
Registration No. 35,748
Shell Oil Company
P.O. Box 2463
Houston, TX 77252-2463
(713) 241-5593

TABLE OF CONTENTS

REAL PARTY IN INTEREST	1
RELATED APPEALS AND INTERFERENCES	2
STATUS OF CLAIMS	2
STATUS OF AMENDMENTS	2
SUMMARY OF INVENTION	2
ISSUES	3
GROUPING OF THE CLAIMS	4
ARGUMENTS	4
CONCLUSION	8

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§	*Group Art Unit:* 2177
	§	
JANICE LYNN FARMER, et. al	§	
	§	*Examiner:* **Khanh B. Pham**
	§	
Filed: **May 6, 1999**	§	
	§	
Serial No.: **09/306,135**	§	
	§	
For: **Hazard Communication System**	§	*Attorney Docket No.* **TH1213**

APPEAL BRIEF

RECEIVED
FEB 0 9 2004
Technology Center 2100

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby timely submit this Appeal Brief, in triplicate; the Notice of Appeal having been filed on September 24, 2003 and the Final Rejection dated May 30, 2003, 37 C.F.R. 1.192(a). In response to the December 30, 2003 Notification of Non-Compliance with 37 C.F.R. § 1.192(c), this replacement appeal brief is timely. The requisite fee set forth in 37 C.F.R. § 1.17(c) has been debited from the Locke Liddell & Sapp LLP Deposit Account No. 12-1322 (Ref. No. 013129-00059).

REAL PARTY IN INTEREST

The real party in interest in this appeal is Shell Oil Company, a corporation created and existing under the laws of Delaware, United States, to whom this Application has been assigned.

RELATED APPEALS AND INTERFERENCES

No related appeals or interferences exist.

STATUS OF CLAIMS

Claims 1-7, 14, and 18-31 have been rejected on grounds discussed herein. Accordingly, the claims on appeal are Claims 1-7, 14, and 18-31. A copy of the claims on appeal is set forth in the *Appendix*. Each of these claims stands finally rejected for which Appellants bring the present appeal to the Board.

STATUS OF AMENDMENT

No amendment after the Final Office Action dated May 30, 2003 has been filed.

SUMMARY OF INVENTION

The present invention relates to a data-centric hazard communication apparatus and system as claimed by Claims 1-7, 14, and 18-23 and a method for communicating hazard information as claimed by Claims 24-31. The apparatus and the system including the apparatus include an authoring module for identification of hazardous material and its characteristics and a means for disseminating hazard information about said hazardous material, its components, decomposition products of the material, and substances related to the hazardous material wherein said means for disseminating hazard information communicates with said authoring module. (*See, e.g.*, FIGS. 1-2, Specification p. 4, ll. 11-26, p. 5, l. 29-p. 6, l. 16). In the preferred embodiment, the authoring module further includes an automated means for selectively decompiling said hazardous material, determining its components and decomposition products

and their respective characteristics (*see, e.g.*, FIGs. 1-3, p. 9, l. 14-p. 11, l. 8, p. 14, ll. 9-18); an automated means for associating said hazardous material and said component characteristics with hazard information, using a user defined set of hazardous material rules (*see, e.g.*, FIGs. 1-3, p. 11, l. 9-p. 12, l. 5, p. 14, l. 9-p.16, l. 15, p. 18, l. 26-p. 19, l. 7); and a means for recompiling said hazardous material and said components associated with hazard information to provide hazard information about the hazardous material, its components, decomposition products of said hazardous material, and substances related to said hazardous material. (*See, e.g.*, FIGs. 1-3, p. 16, l. 17-p. 17, l. 16).

The method for communicating hazard information includes entering information related to a hazardous material and its characteristics into a computerized database (*see, e.g.*, FIGS. 1-2, Specification p. 4, ll. 11-26, p. 5, l. 29-p. 6, l. 16); selectively automatically decompiling said hazardous material into its components, and decomposition products and their respective characteristics (*see, e.g.*, FIGs. 1-3, p. 9, l. 14-p. 11, l. 8, p. 14, ll. 9-18); automatically associating said hazardous material and component characteristics with hazard information using a set of user defined hazardous material rules (*see, e.g.*, FIGs. 1-3, p. 11, l. 9-p. 12, l. 5, p. 14, l. 9-p.16, l. 15, p. 18, l. 26-p. 19, l. 7); recompiling said hazardous material information associated with said hazardous material and its components; and disseminating said hazardous material information related to said hazardous material and its components. (*See, e.g.*, FIGs. 1-3, p. 16, l. 17-p. 17, l. 16).

ISSUES

The issue on appeal is premised on the grounds of rejection set forth on page 2 of the Final Office Action dated May 30, 2003. The issue is:

1. Whether the Examiner has erred in rejecting Claims 1-7, 14, and 18-31 as being anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,097,995 ("*Tipton*").

GROUPING OF THE CLAIMS

1. For purposes of the anticipation rejection under 35 U.S.C. § 102(e) of *Tipton*, Claims 1-7, 14, and 18-31 stand or fall together.

ARGUMENTS

The Examiner Has Erred in Rejecting Claims 1-7, 14, and 18-31 Under 35 U.S.C. §102(e).

To anticipate a claim, a reference must disclose every limitation of the claimed invention, either explicitly or inherently. *E.g.*, *In re Schreiber*, 128 F.3d 1473, 1477, 44 U.S.P.Q.2d 1429, 1431 (Fed. Cir. 1997). Anticipation of a patent claim requires a finding that the claim at issue "reads on" a prior art reference. *See, e.g.*, *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781, 227 U.S.P.Q. 773, 778 (Fed. Cir. 1985). Appellants respectfully assert that the Examiner has erred in claiming the *Tipton* reference reads on Claims 1-7, 14, and 18-31 of the present application.

The Examiner has incorrectly rejected Claims 1-7, 14, and 18-31 Under 35 U.S.C. §102(e), as being anticipated by *Tipton*. Specifically, the Examiner states that *Tipton* discloses:

- "an authoring module for identification of hazardous material, and determining its characteristics" (Col. 41, lines 15-67), the authoring module further comprising:
- "an automated means for decompiling said hazardous material, and determining its components and their respective characteristics (Col. 26, lines 10-38, Fig. 26);

- "an automated means for associating said hazardous material and said component characteristics with hazard information, using a user defined set of hazardous material rules" (Col. 41, lines 15-67);

- "a means for recompiling said hazardous material and said components associated with hazard information about the hazardous material, its components, its' decomposition products of said hazardous material, and substances related to said hazardous material" (Col. 41, lines 15-67); and

- "a means for disseminating hazard information about said hazardous material, its components, decomposition products of the material, and substances related to the hazardous material wherein said means for disseminating hazard information communicates with said authoring module." (Col. 41, lines 15-67).

For the following reasons, *Tipton* does not anticipate Claims 1-7, 14, and 18-31 of the present application.

A. *Tipton* Does Not Disclose User Defined Rules.

Each claim of the present application requires "user defined set of hazardous material rules." In contrast, *Tipton* does not disclose a user defined set of hazardous material rules. *Tipton* only provides agency and organization rules that are defined by the respective agency or organization in its disclosure of "Information Gathering." *See* Col. 54, l. 47-col. 59, l. 3. None of these rules are user defined.

The Examiner cites Col. 41, ll. 15-67 of *Tipton* for this element. The only defining function allowed to the use in this section is related to a user defining the report to be generated. *See* Col. 41, ll. 28-30 ("This system, as shown in window 6700 of FIG. 67, allows a user to define his/her own reports and to save the report for later use."). Though the citation to column

41 of *Tipton* includes references to regulation compliance, "user defined set of hazardous material rules" is not disclosed in *Tipton* in this section or any other portion of the disclosure of *Tipton*. For this reason alone, the Examiner has erred in rejecting Claims 1-7, 14, and 18-31 of the present application in light of *Tipton*.

B. *Tipton* Does Not Disclose Automatically Associating the Hazardous Material and Component Characteristics.

Tipton also fails to disclose an automated means for selectively decompiling said hazardous material as required by each claim of the present application. The Examiner cites Col. 41, ll. 15-67 of *Tipton* for this element. *Tipton* only discloses the manual entry of information related to a specific substance. *Tipton* discloses the entry of a preset mix that requires that the user identify all components of the mix and the percentages of each component in the mix. *See* Col. 26, ll. 10-38 and Fig. 26. The mix in *Tipton* is fixed and the use is restricted to only add additional containers of this specific preset mix, provided that each contains the very same components and percentages. Any variation in the preset mix requires manual addition of new information to the database. *See* Col. 26, ll. 27-30 ("The preset mix is not easily altered because the system requires a breakdown of the chemical components to be entered into the system.").

In contrast, Claims 1-7, 14, and 18-31 of the present application require automated means for selectively decompiling said hazardous material. For this additional reason, the Examiner has erred in rejecting Claims 1-7, 14, and 18-31 of the present application in light of *Tipton*.

C. *Tipton* Does Not Disclose an Automated Means for Selectively Decompiling the Hazardous Material, Determining its Components and Decomposition Products and Their Respective Characteristics.

The claims of the present application require a selectively or selectively automatically decompiling the hazardous substance. The Examiner cites Col. 26, ll. 10-38 and Fig. 26 of *Tipton* as disclosing this element. This section of *Tipton* not only fails to disclose "selectively or

selectively automatically decompiling the hazardous substance," but also teaches away from this element, which is required by every claim on appeal.

As previously stated, *Tipton* only discloses the manual entry of information related to a specific substance. *Tipton* discloses the entry of a preset mix that requires that the user identify all components of the mix and the percentages of each component in the mix. *See* Col. 26, ll. 10-38 and Fig. 26. This information does not accommodate information regarding decompiling or the determination of decomposition products. In fact, the mix in *Tipton* is fixed and any variation in the preset mix, such as decomposition, requires a new addition to the database. *See* Col. 26, ll. 27-30 ("The preset mix is not easily altered because the system requires a breakdown of the chemical components to be entered *into* the system." (emphasis added)). Rather than disclosing a selectively or selectively automatically decompiling the hazardous substance, *Tipton* only discloses the capability to generate limited MSDS reports only as to the substance and its base ingredients. *See* Col. 41, ll. 44–50.

In contrast, the claims of the present invention require selective decompiling of the hazardous material. Substances may be entered into the present invention database 500 interactively utilizing the Material Information and Composition screens. *Specification*, pp. 8, 24. Records for subsequent containers of the material may be created either interactively, or by copying the existing record, including ranges from the database. *Id.* at p. 24. The rules engine 155 and substance processor 120 may be user programmed to recognize decomposition of certain components in a mixture based on various conditions. *See id.* at p. 13. The present invention as claimed in Claims 1-7, 14, and 18-31 is capable of determining the toxicity and/or hazard information related to the (a) material as blended, (b) intermediate mixtures or products, (c) components, and (d) decomposition products. *See id.* This selective decompiling of the data as

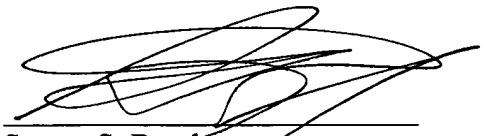
claimed allows for a summary deblend, a total deblend, or a purpose deblend. Therefore, because *Tipton* fails to disclose this selective decompiling process as claimed in every claim of the present application, *Tipton* fails to anticipate this element of Claims 1-7, 14, and 18-31 also.

CONCLUSION

The rejection of Claims 1-7, 14, and 18-31 Under 35 U.S.C. §102(e), as being anticipated by *Tipton* is improper for the reasons discussed herein. Accordingly, Claims 1-7, 14, and 18-31 are in a condition for allowance.

A decision of the Board consistent with this showing is earnestly requested.

Respectfully submitted,



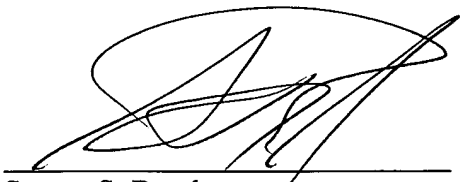
Date: January 30, 2004

Steven S. Boyd
Registration No. 42,353
Locke Liddell & Sapp LLP
600 Travis Street, Suite 3400
Houston, Texas 77002-3095
(713) 226-1218

Yukiko Iwata
Registration No. 35,748
Shell Oil Company
P.O. Box 2463
Houston, TX 77252-2463
(713) 241-5593

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 30, 2004.



Steven S. Boyd
Registration No. 42,353

APPENDIX
CLAIMS ON APPEAL

1. A data-centric hazard communication apparatus comprising:

a) an authoring module for identification of hazardous material and its characteristics, the authoring module further comprising:

- an automated means for selectively decompiling said hazardous material, determining its components and decomposition products and their respective characteristics;

- an automated means for associating said hazardous material and said component characteristics with hazard information, using a user defined set of hazardous material rules;

- and a means for recompiling said hazardous material and said components associated with hazard information to provide hazard information about the hazardous material, its components, decomposition products of said hazardous material, and substances related to said hazardous material; and

b) a means for disseminating hazard information about said hazardous material, its components, decomposition products of the material, and substances related to the hazardous material wherein said means for disseminating hazard information communicates with said authoring module.

2. The apparatus of claim 1 wherein said means for decompiling said hazardous material comprises a deblending analyzer.

3. The apparatus of claim 2, wherein said means for decompiling hazardous material further comprises a substance processor.

4. The apparatus of claim 1 wherein said means for recompiling hazardous material and said components associated with hazard information is a rules engine for generating words and phrases used in the production of documents and system output.

5. The apparatus of claim 1 wherein said means for disseminating hazard information is a distribution module.

6. The apparatus of claim 1 wherein said means for disseminating hazard information is an on-line module.

7. The apparatus of claim wherein said means for disseminating hazard information is a labeling module.

14. A data-centric hazard communication system comprising:

a) an authoring module for entering information about a hazardous material and its characteristics;

b) a module for selectively decompiling said hazardous-material into its components and decomposition products and their respective characteristics;

c) a rules engine operating on a set of user-defined rules for automatically associating said hazardous material characteristics and its component characteristics with

user-defined hazard information for use in the production of documents and system output to provide hazard information about said hazardous material, its components, and substances related to said hazardous material; and

d) a module for disseminating said hazard information about said hazardous material, its components, and substances related to said hazardous material wherein said module communicates with said authoring module.

18. The system of claim 14, wherein the module for decompiling the hazardous material includes an automated deblending module.

19. The system of claim 18, wherein the module for decompiling the hazardous material further includes a substance processor.

20. The system of claim 14, wherein the rules engine for associating said hazardous material characteristics and its component characteristics with user-defined hazard information further includes a user-defined set of hazardous material rules related to hazardous material and component characteristics.

21. The system of claim 14, wherein said hazard material rules may relate at least one regulatory, transportation, storage, handling, exposure, or emergency requirements for said hazardous material and its components.

22. The system of claim 14, wherein said user-defined hazardous material information is comprised of user-defined words and phrases.

23. The apparatus of claim 1, wherein said user defined set of hazardous material rules may relate to transportation, storage, regulatory, exposure or emergency requirements for said hazardous material and its components.

24. A method for communicating hazard information, the steps comprising:

(a) entering information related to a hazardous material and its characteristics into a computerized database;

(b) selectively automatically decompiling said hazardous material into its components, and decomposition products and their respective characteristics

(c) automatically associating said hazardous material and component characteristics with hazard information using a set of user defined hazardous material rules;

(d) recompiling said hazardous material information associated with said hazardous material and its components; and

(e) disseminating said hazardous material information related to said hazardous material and its components.

25. The method of claim 24, wherein step (b) further includes utilizing an automated deblender for decompiling said hazardous material.

26. The method of claim 25, wherein said automated deblender further includes a substance processor.

27. The method of claim 24, wherein said hazardous material rules includes rules relating at least one of regulatory, transportation, storage, handling, exposure or emergency requirements for said hazardous material and its components.

28. The method of claim 24, wherein step (e) further includes the step of automatically disseminating said hazard information online.

29. The method of claim 24, wherein step (e) further includes the step of creating hazardous material labels.

30. The method of claim 24, wherein said hazardous material and its components characteristics are referenced by a rules engine operating on user-defined rules to associate hazard information from a user-defined database of information with said hazardous material and its components.

31. The method of claim 24 wherein said hazard information is comprised of a user defined set of words and phrases.